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December 18, 2003

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation, CC Docket Nos. 96-45, 97-21, 02-6

Dear Ms. Dortch:

On December 17, 2003, Thomas F. O'Neil III and I, representing various E-rate program service providers and applicants, met with Christopher Libertelli, Senior Legal Advisor to Chairman Powell, to discuss matters related to the processing of E-rate funding requests.

During the meeting, we discussed the Principles for Treating Entities Under Investigation Relating to Their Participation in the Schools and Libraries Universal Service Support Mechanism (the "Principles"), recently approved by the Commission and adopted by the Universal Service Administrative Company ("USAC"). The Principles will benefit E-rate program participants by allowing for processing of certain pending funding requests, and provide much-needed guidance to USAC as it attempts to clear the backlog of pending applications for prior funding years.

However, the Principles do not affect most pending funding requests, and hundreds of applicants and service providers lack information about the status of their requests. Many do not know if their requests are the subject of a pending law enforcement investigation, or, indeed, of issues causing delay in USAC action on their requests.

USAC also desires a more open exchange of information,<sup>1</sup> but its ability to provide information is hindered by several factors. For example, USAC is awaiting Commission resolution of certain unspecified policy issues. In addition, some parties may not know that they are under law enforcement investigation, and USAC understandably wants to do nothing that might jeopardize the ability of law enforcement authorities to conduct their investigations.

All E-rate program participants stand to benefit from greater certainty about the processing and status of funding requests, and prompt resolution of those requests. At our meeting, we made several recommendations in support of these goals, which we urge the Commission to implement promptly. In particular, the Commission should:

- Give USAC the guidance it needs to process Funding Request Numbers ("FRNs") associated with applicants and service providers who are *not* under a pending law enforcement investigation.
- Notify applicants which of their funding requests are being deferred pending resolution of a policy issue, and the nature of the issue.
- Extend the Principles to FRNs that are under review for policy issues relating to the E-rate activities of the applicant or a service provider utilized by that applicant. Thus, any FRN not subject to an active law enforcement investigation or a pending policy determination should be processed in accordance with the Principles.
- Establish a timetable for providing guidance on outstanding policy issues.
- Concurrent with the adoption of such a timetable, establish a framework to provide guidance to entities that will be subject to the policy determinations. In particular, provide a mechanism that allows affected entities to confirm that they are not subject to a law enforcement investigation, while protecting program integrity and USAC's duty to prevent waste, fraud, and abuse.

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<sup>1</sup> USAC's Schools and Libraries Division recently recommended that it be permitted to improve applicant and service provider access to information about the status of their applications. *Recommendations of the Task Force on the Prevention of Waste, Fraud and Abuse, Convened by the Schools and Libraries Division, Universal Service Administrative Company, September 22, 2003*, at 13.



- Clarify that the Principles apply where USAC is aware of an active law enforcement but the entities under investigation are not, and that USAC will in such circumstances process FRNs not affected by an active investigation.
- Clarify which entities are considered law enforcement authorities, and confirm that USAC is not a law enforcement authority.

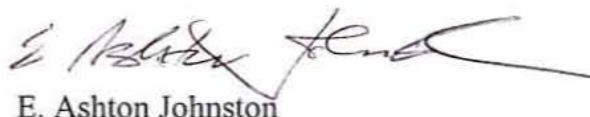
Addressing these matters will substantially benefit all E-rate program participants. Entities that are not the subject of a pending law enforcement investigation nonetheless are affected by unresolved policy issues. Moreover, some parties are at a particular disadvantage to entities that know they are under investigation; those entities can move ahead to identify which FRNs are affected by the investigation and which are not, and USAC can then process and fund requests that meet the criteria set forth in the Principles. In contrast, applicants and service providers who are not aware of any law enforcement investigation involving them and in fact may not be under a law enforcement investigation, nonetheless may be unable to obtain information from USAC or from law enforcement authorities. Owing in part to these circumstances, there is growing concern about disparate treatment of E-rate program participants, as well as a more general concern that no comprehensive structure exists for the adoption and implementation of policies for processing applications and funding requests.

Addressing these matters also will avoid placing additional unnecessary burdens on the E-rate program. New applicants, and applicants whose requests for prior funding years remain pending, inevitably will submit new funding requests that might not have been submitted had policy issues been resolved, and guidance offered, prior to filing.

Uncertainty and delay are undermining Congress' goal of affordable access to and use of advanced telecommunications services by schools and libraries. Prompt resolution and clarification as requested herein will permit applicants to move forward with their technology planning and implementation, and will allow service providers to assess the economic risks and realities of their E-rate business.

This letter is being filed electronically for inclusion in the above-referenced dockets.

Sincerely,



E. Ashton Johnston

EAJ/jas

cc: Christopher Libertelli